IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2546 OF 2005,
CRIMINAL WRIT PETITION NO.2548 OF 2005,
CRIMINAL WRIT PETITION NO.2549 OF 2005,
CRIMINAL WRIT PETITION NO.2550 OF 2005
AND
CRIMINAL WRIT PETITION NO.2551 OF 2005

Shri Rohinton Faredoon Deolaliwala ...Petitioner
(In all Petitions)

Vs.

Smt. Vanita S. Valecha & Anr. ...Respondents
(In all Petitions)

Shri M.A. Desai for the Petitioner in all Petitions.
Shri P.D.Sawardekar for the Respondent No.1.
Shri S.V.More, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 19, 2006.

P.C.:

1. The facts of these Writ Petitions and contentions which are raised by the Petitioner in these Petitions are identical and therefore, a reference is made to the facts of the case in Writ Petition No.2546 of 2005. The Petitioner is an accused in a private complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate issued process on the complaint. A revision Application preferred by the Petitioner challenging the order issuing process has been rejected by the learned Additional Sessions Judge.

2. The learned counsel appearing for the Petitioner invited my attention to notice dated 17th June, 2004 and submitted that the notice has been issued by M/s.S.P.Valecha and Associates. He submitted that M/s.S.P.Valecha and Associates are not the complainants in every complaint. He submitted that there is no specific demand in the said notice and there is no indication in the said notice as to whom payment should be made. He submitted that on the basis of a single notice more than one complaint could not have been filed. He also invited my attention to one of the earlier letters dated 04th June, 2004 and submitted that there was no specific demand in the said letter. He invited my attention to assertion made in paragraph No.10 of the complaint and in particular the assertion that the accused have failed and neglected to remit the loan amount covered under the said cheques to the complainant. He submitted that all these questions go to the root of the matter and ought to have been examined by the learned Magistrate.

3. I have considered the submissions made by the learned counsel appearing for the Petitioner. The Apex Court in the case of **Monaben Shah & Anr. Vs. State of**

Gujarat ((2004) 7 Supreme Court Cases Page 15) held that if the substance of the allegations made in the complaint under section 138 of the said Act of 1881 fulfil the requirements of the said section, the complaint has to proceed and is required to be tried. The Apex Court further held that while construing a complaint under section 138 of the said Act hypertechnical approach should not be adopted so as to quash the same and power of quashing should be exercised very sparingly. The Apex Court further held that, where, read as whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. The Apex Court further observed that it is not necessary to reproduce language of section 141 verbatim in the complaint and the complaint is required to be read as a whole. In the case of **Dalmia Cement (Bharat) Ltd. Vs. Galaxy Traders & Agencies Ltd. & Ors. ((2001) 6 Supreme Court Cases Page 463)** the Apex Court observed that having regard to intention of the legislature, the provisions of the section 138 of the said Act are required to be interpreted in the light of the objects intended to be achieved by it. It is further observed that efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged.

4. Perusal of the notice dated 17th June, 2004 shows that detailed description of all the cheques which are subject matter of the complaints in this group of Petitions have been mentioned. The notice mentions the names of the persons in whose favour cheques have been drawn, the cheque numbers, amounts and the dates of dishonour memo. In paragraph No.1 of the notice, it is stated as follows:

> "Once again take a notice u/s 138 of Negotiable Instrument Act, within 15 days you are requested to make good in lieu of these cheques, payment along with the interest thereon failing which, I shall be intiating legal proceedings in the court of law."

5. There is no dispute as regards service of the said notice. It is impossible to accept that the said notice cannot be construed as notice of demand. The said notice refers to cheques issued by the Petitioner to various members of the Valecha family and to S.P.Valecha H.U.F. Every payee has filed separate complaint on the basis of the said notice. There is no prohibition in law for filing separate complaints under

section 138 of the said Act of 1881 on the basis of one notice.

6. I have perused the complaint. As stated earlier complaint has to be read as a whole and only one sentence in paragraph No.10 cannot be picked up in isolation to say that complaint is not maintainable. The complaint prima facie contains all the ingredients of the section 138 of the said Act of 1881. Therefore, the Sessions Court was right in not interfering with the order passed by the learned Magistrate of issuing process. There is no merit in the Writ Petitions and the same are rejected. It is obvious that the observations which are made in this order are for limited purposes of examining the legality and validity of order issuing process.

JUDGE